

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:08-CR-00023-F-1  
No. 5:16-CV-00371-F

ANTONIO DONTEZ SCOTT, )  
Petitioner, )  
 )  
v. ) ORDER  
 )  
UNITED STATES OF AMERICA, )  
Respondent. )

This matter is before the court on Antonio Dontez Scott's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-56]. The issues have been fully briefed, and the matter is now ripe for ruling. For the reasons more fully stated below, Scott's Motion to Vacate is ALLOWED.

In Scott's Motion to Vacate, he argues that he is no longer an armed career criminal as a result of *Johnson v. United States*, 135 S. Ct. 2551 (2015). Mot. Vacate [DE-56] at 4. In particular, Scott contends that his North Carolina conviction for assault with a deadly weapon inflicting serious injury is no longer a valid predicate conviction for the Armed Career Criminal Act ("ACCA"). *Id.*

Respondent agrees that, in light of *Johnson*, Scott is no longer an armed career criminal under the ACCA, 18 U.S.C. § 924(e)(1). Resp. [DE-59] at 2. Citing *United States v. Geddie*, 125 F.Supp. 3d 592 (E.D.N.C. 2015), Respondent notes that Judge Flanagan has held that assault with a deadly weapon inflicting serious injury is not a violent felony for purposes of § 924(e). *Id.* at 3. Respondent does not agree that this offense is not divisible as to mens rea, but having

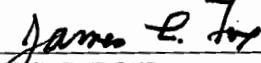
reviewed the available *Shepard* documents, Respondent is unable to show that the offense to which Scott pleaded guilty charged an intentional and/or purposeful state of mind. *Id.* Thus, Respondent concedes that Scott's conviction is not a violent felony. *Id.* at 4.

Because Scott lacks the three ACCA predicates, his statutory maximum term of imprisonment is 120 months. *Id.* (citing 18 U.S.C. § 924(a)(2)). Scott's sentence of 180 months exceeds the otherwise-applicable statutory maximum. *Id.* For these reasons, Respondent agrees that Scott's judgment should be vacated, and he should be resentenced without the ACCA enhancement. *Id.*

In light of the foregoing, including the Government's concessions, Scott's Motion to Vacate [DE-56] is ALLOWED. Scott's September 4, 2008 Judgment [DE-23] of conviction and sentence hereby is VACATED, and he is to be promptly resentenced without the § 924(e) enhancement.

SO ORDERED.

This, the 21<sup>st</sup> day of July, 2016.

  
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JAMES C. FOX  
Senior United States District Judge